

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

STATE OF MISSOURI,

Appellant,

v.

DOUGLAS E. PENNINGTON,

Respondent.

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**DOCKET NUMBER WD75506**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** June 11, 2013

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**APPEAL FROM**

The Circuit Court of Platte County, Missouri  
The Honorable Owens Lee Hull, Jr., Judge

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**JUDGES**

Division Two: Mitchell, P.J., and Newton, J., CONCURRING.  
Hardwick, J., DISSENTING IN SEPARATE OPINION.

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**ATTORNEYS**

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Attorney for Respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

STATE OF MISSOURI, )  
)  
) **Appellant,** )  
v. ) **OPINION FILED:**  
) **June 11, 2013**  
DOUGLAS E. PENNINGTON, )  
)  
) **Respondent.** )

**WD75506**

**Platte County**

**Before Division Two Judges:** Karen King Mitchell, Presiding Judge, and Thomas H. Newton and Lisa White Hardwick, Judges

The State of Missouri appeals from the circuit court's interlocutory order suppressing oral and written statements made by Douglas Pennington during a police interview. The State argues that the circuit court applied an incorrect legal standard in requiring the State to demonstrate an express waiver of Pennington's rights to remain silent and have counsel present during questioning. In *Berghuis v. Thompkins*, 130 S. Ct. 2250, 2261 (2010), the United States Supreme Court held that express waivers are not required in order to demonstrate compliance with the prophylactic warnings mandated by *Miranda v. Arizona*, 384 U.S. 436 (1966). Because the circuit court applied an incorrect legal standard in suppressing the statements, we reverse and remand for further proceedings.

**REVERSED AND REMANDED.**

**DISSENT BY JUDGE HARDWICK.**

**Majority Opinion holds:**

1. The United States Supreme Court's opinion in *Berghuis v. Thompkins* held that waivers of the right to remain silent, following receipt of *Miranda* warnings, need not be express.

2. To establish an implied waiver, the State must prove that the accused not only received *Miranda* warnings but also understood them.
3. Here, the evidence presented at the suppression hearing demonstrated that, after Pennington was given *Miranda* warnings, he indicated four times that he understood them and then spoke with the officer. Although there was no express waiver, under *Berghuis*, none was required.
4. In finding that there was no evidence or testimony to support a knowing and intelligent waiver, the circuit court applied an incorrect legal standard, given that, while there was no evidence of an express waiver, there was evidence of an implied waiver.
5. Because the circuit court applied an incorrect legal standard, its decision is reversed, and the case is remanded for further proceedings consistent with this opinion.

**Majority Opinion by: Karen King Mitchell, Presiding Judge**

June 11, 2013

**Dissenting Opinion holds:**

I dissent from the majority's conclusion that the circuit court incorrectly applied the law in determining whether the defendant knowingly and intelligently waived his *Miranda* rights. The record indicates that the circuit court initially considered whether there was an explicit waiver of rights, but it ultimately considered whether there was *any* evidence to establish an implicit waiver. The suppression order should be affirmed because the circuit court applied the correct legal standard in determining that the State failed to meet its burden of proving a valid waiver.

**Dissenting Opinion by: Lisa White Hardwick, Judge**

June 11, 2013

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